IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

Bail Appl..No. 6094 of 2007()

AGAINST THE ORDER IN LP 54/2007 IN
CC.1238/2004 of J.M.F.C.,CHAVAKKAD

.....

PETITIONER/2ND ACCUSED:

MUSTAFA, S/O.MUHAMMEDALI,
RAMANATH HOUSE, P.O.BRAHMAKULAM,
CHAVAKKAD TALUK, THRISSUR.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6094 of 2007

Dated this the 8th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 394 I.P.C. The alleged incident took place in 2004. It was a case of snatching gold ornaments on a public road, it is submitted. The final report was filed and cognizance was taken in 2004. As the petitioner was not available for trial, the case against him was transferred to the list of long pending cases in 2007. Coercive processes have been issued against the petitioner. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful or deliberate. The petitioner is willing to surrender before the learned Magistrate and seek regular bail. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He, therefore, prays that directions under Section 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioner on bail when he appears and applies for bail.

3. In Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reason in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

5. In the result, this bail application is dismissed but with the specific observation that if the petitioner surrenders

before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

6. I make it clear that I expect the learned Magistrate to dispose of the application purely on merits and I have not intended to express any opinion as to the manner in which the application has to be disposed of.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007